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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

REYNARD T. NEAL,

Plaintiff and Appellant,

v.

LORRAINE SILVERS et al.,

Defendants and Respondents.

B281024

(Los Angeles County
Super. Ct. No. BC567480)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lawrence Cho, Judge. Affirmed.

Mary E. Cochran for Plaintiff and Appellant.

Hartsuyker, Stratman & Williams-Abrego, Matthew J. Sauders; Veatch Carlson and Peter H. Crossin for Defendants and Respondents.

Reynard T. Neal (Neal) slipped on stairs at his duplex, which Lorraine Silvers owned and her then husband Stephen Silvers maintained. Neal sued the Silvers, and a jury found in the Silvers's favor. Neal now contends that the jury's verdict rested on inadmissible evidence about how his injury occurred. We reject that contention and affirm the judgment.

BACKGROUND

Lorraine Silvers owned a duplex. Stephen Silvers managed the property and maintained it. Neal was a tenant at the duplex. Neal was walking up the stairs at the duplex when a wood plank gave way and his right leg went through it, causing Neal to hit his left knee. Neal was examined at Harbor-UCLA Medical Center (Harbor-UCLA) and was told he would require surgery.

Neal sued the Silvers for negligence and the matter was tried by a jury. The jury found that the Silvers owned, leased and controlled the property and were negligent in using or maintaining it. However, their negligence was not a substantial factor in causing harm to Neal. The trial court therefore entered judgment for the Silvers.¹

DISCUSSION

Neal contends that the jury's verdict was premised on inadmissible evidence, i.e., a medical record from the hospital indicating that he was injured while playing basketball. As we now explain, we reject that contention.

The challenged evidence was introduced during Neal's case-in-chief. He testified on direct examination that he injured his knee

¹ The trial court denied Neal's motions for a new trial and for judgment notwithstanding the verdict.

when his leg went through the wood plank. Though Neal had reviewed a medical note from Harbor-UCLA describing his injury as resulting from playing basketball, he explained on direct examination that his basketball injury was from a prior incident, and that he only mentioned it to a nurse in the context of providing his medical history. In fact, he told the nurse that his current injury happened when he fell on the stairs.

On cross-examination, counsel for the Silvers asked Neal if he had seen his medical records from Harbor-UCLA. Neal's counsel initially objected on foundational grounds but the trial court overruled the objection. Neal then testified he had seen the records but disagreed with them in part. Counsel objected again without stating a ground and the trial court overruled the objection, finding it was not hearsay. Counsel then went over the records with Neal, confirming that they referred to left knee pain. The following exchange then occurred:

“Q And the very next line below that, it says brief HPI, which would be brief history of the injury.

“Can you read that into the record?

“Ms. Cochran: Your honor, I'm going to object.

“The court: Sustained.

“Mr. O'Connor: Am I allowed to read it, your honor, and ask him if that's what he told?

“The court: Yes. It's not being admitted for the truth of the matter asserted.

“By Mr. O'Connor:

“Q Below that it says brief history. It says complaint of stop, pivot.

[¶] . . . [¶]

“Q Okay. Complains of stop, pivot to the left—pivot to left. And then it says left knee again. Felt a pop, complained of left knee pain.

“Is that what you told Mr. Hyson, whose name is at the bottom of the page?

“A Not as the cause of the injury, no.

[¶] . . . [¶]

“Q Did you tell Mr. Hyson that, that day that you had stopped and pivoted and that’s what [led] to your left knee pain three days before?

“A In reference to a previous injury. He mentioned he wanted to know my history. I mentioned when I ruptured both my Achilles tendons, and that’s how I described it.”

Exhibit 16, medical records from Harbor-UCLA, from which counsel was reading, was not admitted into evidence on plaintiff’s objections under hearsay and foundation.

On appeal, Neal complains that the Silvers’s counsel should not have been allowed to question him about the records because, first, they were not authenticated and, second, they were hearsay.

First, generally speaking, documents must be authenticated before they are admissible in evidence. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 525.) “Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law.” (Evid. Code, § 1400.) Here, Neal himself authenticated his medical records. On direct examination, he said that he was treated at Harbor-UCLA. Then he said he had reviewed his records and saw the note describing his injury as resulting from playing basketball. In any event, the medical records were not admitted.

Second, Neal's statements were not inadmissible hearsay. A witness's statement that is inconsistent with his or her testimony at trial is not made inadmissible by the hearsay rule. (Evid. Code, § 1235; *People v. Zapien* (1993) 4 Cal.4th 929, 951, 953.) At trial, Neal testified that his injury resulted from the fall on the stairs. But, as Neal concedes in his opening brief on appeal, the medical record offered an alternate explanation for his injuries. Per the medical record, he told a nurse he was injured while stopping and pivoting in a basketball game. That prior statement to the nurse was inconsistent with his trial testimony. Because Neal testified at trial and was given the opportunity to explain the statement, his prior inconsistent statement that he injured himself playing basketball was admissible. (See Evid. Code, § 770.)

Given our conclusion that the evidence was admissible, we reject Neal's related contention that trial counsel's cross-examination and argument about the medical record and basketball injury constituted misconduct. As we have said, counsel's cross-examination was proper. And counsel's argument was a fair comment on the evidence. (*People v. Sassounian* (1986) 182 Cal.App.3d 361, 396.)

DISPOSITION

The judgment is affirmed. Lorraine and Stephen Silvers are awarded their costs on appeal.

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DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.